

The House Committee on Agriculture and Consumer Affairs offers the following substitute to HB 522:

A BILL TO BE ENTITLED
AN ACT

To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, so as to provide for discovery in cases involving an application of a gas company to establish a capacity supply plan; to define certain terms; to provide certain requirements for interstate capacity assets which are not retained; to change the Public Service Commission's review of the assignment of interstate capacity assets from annual to periodic; to provide that a marketer may opt out of a capacity supply plan under certain circumstances; to provide requirements for assignments of interstate assets; to provide that orders concerning utilization or monetization of excess interstate capacity assets must provide for fair allocation of the costs; to provide that an electing distribution company must obtain the approval of the commission, after a public hearing, of procedures relating to how it will comply with the required standards; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended by revising subsection (a) of Code Section 46-2-57, relating to obtaining of discovery by employees and agents of the Public Service Commission and the discovery rights of intervenors, as follows:

"(a) In any case pending before it, the commission, in addition to its now existing authority to do so, is authorized to issue an order permitting its employees and agents to take depositions and otherwise obtain discovery of any matter, not privileged, which is relevant to the subject matter involved in the investigation, proceeding, or petition before the commission, in the same manner prescribed in Chapter 11 of Title 9 for discovery in civil actions. In any case involving an application of a gas company to establish just and reasonable rates or a capacity supply plan pursuant to Code Section 46-2-23.1 or Code Sections 46-4-154 through 46-4-164, intervenors who are granted party status pursuant to

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Code Section 46-2-59, as well as the gas company subject to the particular proceeding, shall have all discovery rights available under Chapter 11 of Title 9."

SECTION 2.

Said title is further amended by revising subsection (e) of Code Section 46-4-155, relating to interstate capacity assets, as follows:

"(e)(1) As used in this subsection, the term:

(A) 'Interstate ~~interstate~~ capacity assets' means interstate transportation and out-of-state gas storage capacity.

(B) 'Assignment' means the transfer of all contractual rights and obligations to an assignee with the assignee receiving the right to act as the shipper under contract.

(2) If, pursuant to the provisions of this article, the rates for commodity sales service of an electing distribution company within a delivery group or groups become no longer subject to the approval of the commission nor to the provisions of Code Section 46-2-26.5, the electing distribution company nevertheless shall continue to be responsible for acquiring and contracting for the interstate capacity assets necessary for gas to be made available on its system, whether directly or by assignment to marketers, for firm distribution service to retail customers within such delivery group or groups unless determined otherwise by the commission in accordance with this subsection.

(3) At least every third year following the date when the rates for commodity sales service within a delivery group or groups become no longer subject to commission approval nor to the provisions of Code Section 46-2-26.5, the electing distribution company shall file, on or before August 1 of such year, a capacity supply plan which designates the array of available interstate capacity assets selected by the electing distribution company for the purpose of making gas available on its system for firm distribution service to retail customers in such delivery group or groups.

(4) Not less than ten days after any such filing by an electing distribution company, the commission shall conduct a public hearing on the filing. The electing distribution company's testimony shall be under oath and shall, with any corrections thereto, constitute the electing distribution company's affirmative case. At any hearing conducted pursuant to this subsection, the burden of proof to show that the proposed capacity supply plan is appropriate shall be upon the electing distribution company.

(5) Following such a hearing, the commission shall issue an order approving the capacity supply plan filed by the electing distribution company or adopting a capacity supply plan for the electing distribution company that the commission deems appropriate. Should the commission fail or refuse to issue an order by the ninetieth day after the electing distribution company's filing which either approves the capacity supply plan filed by the

electing distribution company or adopts a different capacity supply plan for the electing distribution company, the capacity supply plan proposed by the electing distribution company shall thereupon be deemed approved by operation of law.

(6) Any capacity supply plan approved or adopted by the commission shall:

(A) Specify the range of the requirements to be supplied by interstate capacity assets;

(B) Describe the array of interstate capacity assets selected by the electing distribution company to meet such requirements;

(C) Describe the criteria of the electing distribution company for entering into contracts under such array of interstate capacity assets from time to time to meet such requirements; provided, however, that a capacity supply plan approved or adopted by the commission shall not prescribe the individual contracts to be executed by the electing distribution company in order to implement such plan; and

(D) Specify the portion of the interstate capacity assets which must be retained and utilized by the electing distribution company in order to manage and operate its system.

Any interstate capacity assets which are not retained must be either allocated and released to the marketers under the provisions of the electing distribution company's tariff with the electing distribution company converting any assets not currently releasable to interstate service as defined in 18 C.F.R. Part 284 so that they can be allocated and released or assigned to the marketers under a plan of assignment adopted pursuant to paragraph (13) of this subsection.

(7) Once the commission has approved or adopted a capacity supply plan, a marketer may choose to opt out of any part of the plan upon a showing before the commission that the marketer has adequate capacity and supply to serve its customers. Only those ~~When interstate capacity assets that are contained in a capacity supply plan approved or adopted by the commission are~~ selected by a marketer shall be allocated by the electing distribution company ~~to a~~ to such marketer pursuant to the provisions of this article; ~~all of and only~~ the costs of the interstate capacity assets ~~thus allocated~~ selected shall be borne by such marketer except for those direct or indirect costs attributable to utilization or monetization authorized under paragraph (15) of this subsection.

(8) The provisions of law relating to parties, intervention, and discovery in proceedings before the commission shall apply with respect to proceedings under this subsection.

(9) All commission orders issued pursuant to this subsection shall contain the commission's findings of fact and conclusions of law upon which the commission's action is based. Any such order shall be deemed a final order subject to judicial review under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(10) Prior to the approval or adoption of a capacity supply plan pursuant to this subsection, the interstate capacity assets of the electing distribution company in the most

1 current gas supply plan of such company approved or adopted by the commission
2 pursuant to the provisions of Code Section 46-2-26.5 shall be treated as a capacity supply
3 plan that is approved or adopted by the commission for purposes of this subsection.

4 (11) After a capacity supply plan has become effective pursuant to provisions of this
5 subsection as a result of a proceeding before the commission, the commission shall retain
6 jurisdiction of the proceeding for the purposes set forth in this subsection. Upon
7 application of the affected electing distribution company or the consumers' utility counsel
8 division of the Governor's Office of Consumer Affairs or upon its own initiative, the
9 commission may, after affording due notice and opportunity for hearing to the affected
10 electing distribution company and the intervenors in the proceeding, amend the capacity
11 supply plan of the affected electing distribution company. Any such amendment shall not
12 adversely affect rights under any contract entered into pursuant to such plan without the
13 consent of the parties to such contracts. If an amendment proceeding is initiated by the
14 affected electing distribution company and the commission fails or refuses to issue an
15 order by the ninetieth day after the electing distribution company's filing, the amended
16 capacity supply plan proposed by the electing distribution company shall thereupon be
17 deemed approved by operation of law.

18 (12) After an electing distribution company has no obligation to provide commodity
19 sales service to retail customers pursuant to the provisions of Code Section 46-4-156 and
20 upon the petition of any interested person and after notice and opportunity for hearing
21 afforded to the electing distribution company, all parties to the most current proceeding
22 establishing a capacity supply plan for such electing distribution company, the
23 consumers' utility counsel division of the Governor's Office of Consumer Affairs, all
24 marketers who have been issued a certificate of authority pursuant to Code Section
25 46-4-153, and all owners or operators of interstate gas pipelines that are a part of said
26 capacity supply plan, the commission may issue an order eliminating the responsibility
27 of the electing distribution company for acquiring and contracting for interstate capacity
28 assets necessary for gas to be made available on its system as well as the obligation of
29 such electing distribution company to file any further capacity supply plans with the
30 commission pursuant to the provisions of this subsection, if the commission determines
31 that:

32 (A) Upon the assignment of any interstate assets currently held by the electing
33 distribution company to the marketers, the marketers ~~Marketers~~ can and will secure
34 adequate and reliable interstate capacity assets necessary to make gas available on the
35 system of the electing distribution company for service to firm retail customers;

36 (B) Adequate, reliable, and economical interstate capacity assets will not be diverted
37 from use for service to retail customers in Georgia;

1 (C) There is a competitive, highly flexible, and reasonably accessible market for
2 interstate capacity assets for service to retail customers in Georgia;

3 (D) Elimination of such responsibility on the part of the electing distribution company
4 would not adversely affect competition for natural gas service to retail customers in
5 Georgia; and

6 (E) Elimination of such responsibility on the part of the electing distribution company
7 is otherwise in the public interest.

8 If the commission eliminates the responsibility of an electing distribution company for
9 acquiring and contracting for interstate capacity assets and filing further capacity supply
10 plans in accordance with this subsection, the commission shall ~~annually~~ periodically
11 review the assignment of interstate capacity assets.

12 (13) Notwithstanding any other provisions in this Code section to the contrary, ~~no later~~
13 ~~than July 1, 2003,~~ the commission ~~shall~~ may, after notice afforded to the electing
14 distribution company, the consumers' utility counsel division of the Governor's Office
15 of Consumer Affairs, all marketers who have been issued a certificate of authority in
16 accordance with Code Section 46-4-153, and all owners or operators of interstate gas
17 pipelines that are a part of said capacity supply plan, hold a hearing regarding a plan for
18 assignment of interstate assets. After such hearing, the commission may adopt a plan for
19 assignment of interstate capacity assets held by the electing distribution company, except
20 for those interstate capacity assets reasonably required for balancing. If adopted, the plan
21 shall provide for interstate capacity assets to be assigned to certificated marketers who
22 desire assignment and who are qualified technically and financially to manage interstate
23 capacity assets. Marketers who accept assignment of interstate capacity assets shall be
24 required by the commission to use such assets primarily to serve retail customers in
25 Georgia and shall be permitted to use such assets outside Georgia so long as the
26 reliability of the system is not compromised. Thereafter, the commission shall ~~annually~~
27 periodically review the assignment of interstate capacity assets.

28 (14) Any order eliminating the responsibility of the electing distribution company for
29 acquiring and contracting for interstate capacity assets pursuant to paragraph (12) of this
30 subsection and any plan for assignment of interstate capacity assets pursuant to paragraph
31 (13) of this subsection shall, at a minimum, ensure that:

32 (A) Shifts in market share are reflected in an orderly reassignment of interstate
33 capacity assets;

34 (B) Marketers accepting such assignment hold sufficient interstate capacity assets to
35 meet the needs of retail customers;

(C) Before any such assignment is authorized, the assignee demonstrates to the commission that such assignment will result in financial benefits to firm retail customers;

(D) Before any marketer discontinues service in the Georgia market, it assigns its contractual rights for interstate capacity assets used to serve Georgia retail customers in a manner designated by the commission;

(E) In the event that the commission imposes temporary directives in accordance with Code Section 46-4-157, interstate capacity assets assigned to marketers are subject to reassignment by the commission to protect the interests of retail customers; and

(F) Any other requirement that the commission finds to be in the public interest is imposed upon assignees as a condition of the assignment of interstate capacity assets.

(15) After notice and an opportunity for hearing, the commission may authorize, subject to reasonable terms and conditions, an electing distribution company or its designee to utilize or monetize excess interstate capacity assets available to the electing distribution company. Notwithstanding paragraph (7) of this subsection, any order providing for such utilization or monetization shall provide for a fair allocation of the costs of the interstate capacity assets between the electing distribution company and marketers, so that the marketers shall not subsidize directly or indirectly the utilization or monetization of the capacity.

(16) All marketers holding certificates of authority shall have all discovery rights available under Chapter 11 of Title 9 in any commission proceedings involving the electing distribution company. These rights may be enforced pursuant to Code Section 46-2-57. The commission shall also have the right, on its own motion or on the motion of any party entitled to discovery, to enter and enforce such orders regarding discovery as the commission may deem appropriate without the necessity of filing any petitions in the Superior Court of Fulton County or any other court of record."

SECTION 3.

Said title is further amended by revising paragraph (13) of subsection (b) of Code Section 46-4-159, relating to standards of conduct for electing distribution companies and response to complaints, as follows:

"(13) An electing distribution company must ~~file with~~ obtain the approval of the commission, after public hearing, of procedures that will enable marketers and the commission to determine how the electing distribution company is complying with the standards set forth in this Code section; and"

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- SECTION 4.
- All laws and parts of laws in conflict with this Act are repealed.